

1 G. Thomas Martin, III, Esq. (SBN 218456)  
2 Nicholas J. Bontrager, Esq. (SBN 252114)

3 **MARTIN & BONTRAGER, APC**

4 6565 W. Sunset Blvd, Suite 410

5 Los Angeles, CA 90028

6 Telephone: 323.940.1700

7 Facsimile: 323.328.8095

8 tom@mblawapc.com

9 nick@mblawapc.com

10 Attorney for Plaintiff

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 DANIEL BYRD,

14 Plaintiff,

15 vs.

16 NAVIENT SOLUTIONS, INC. d/b/a  
17 STUDENT ASSISTANCE  
18 CORPORATION; and DOES 1-10,  
19 inclusive,

20 Defendant(s).

Case No.:

21 **COMPLAINT AND DEMAND FOR**  
22 **JURY TRIAL FOR:**

23 **1. VIOLATIONS OF THE**  
24 **ROSENTHAL FAIR DEBT**  
25 **COLLECTION PRACTICES**  
26 **ACT [CAL. CIV. CODE § 1788]**

27 **2. VIOLATIONS OF THE**  
28 **TELEPHONE CONSUMER**  
**PROTECTION ACT [47 U.S.C. §**  
**227]**

1 **INTRODUCTION**

2 1. DANIEL BYRD (Plaintiff) brings this action to secure redress from  
3 NAVIENT SOLUTIONS, INC. d/b/a STUDENT ASSISTANCE  
4 CORPORATION (Defendant) for violations of the Rosenthal Fair Debt Collection

1 Practices Act [CAL. CIV. CODE § 1788] and for violations of the Telephone  
2 Consumer Protection Act [47 U.S.C. § 227].

3 **JURISDICTION AND VENUE**

4 2. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1331 as  
5 Plaintiff's claims arise under the laws of the United States.

6 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)  
7 because the acts and transactions alleged in this Complaint occurred here, Plaintiff  
8 resides here, and Defendant transacts business here.

9 **PARTIES**

10 4. Plaintiff is an individual, residing in Richmond, California. Plaintiff  
11 is a natural person from whom a debt collector seeks to collect a consumer debt  
12 which is due and owing or alleged to be due and owing from such person.

13 5. Defendant, is a national lending corporation engaged in the business  
14 of collecting debt in this state and in several other states, with places of business  
15 located throughout the State of California. One of the principal purposes of  
16 Defendant is the collection of debts in this state and several other states, and  
17 Defendant regularly attempts to collect debts alleged to be due.

18 6. Defendant is engaged in the collection of debts from consumers using  
19 the mail and telephone. Defendant regularly attempts to collect debts alleged to be  
20 due another and Defendant is a "debt collector" as defined by the RFDCPA.

21 7. The true names and capacities, whether individual, corporate, or in  
22 any other form, of Defendants DOES 1 through 10, inclusive, and each of them,  
23 are unknown to Plaintiff, who therefore sues them by such fictitious names.  
24 Plaintiff will seek leave to amend this Complaint to show the true names and  
25 capacities of DOES 1 through 10 should they be discovered.

26 **FACTUAL ALLEGATIONS**

27 8. Since approximately 2014, and specifically within one year prior to  
28 the filing of this action, Defendant contacted Plaintiff to collect money, property or

1 their equivalent, due or owing or alleged to be due or owing from a natural person  
2 by reason of a consumer credit transaction and/or "consumer debt." Specifically,  
3 the money sought by Defendant pertains to an educational loan.

4 9. At all times relevant to this action, Defendant owned, operated and/or  
5 controlled telephone number (765) 283-3485. At all times relevant to this action,  
6 Defendant called Plaintiff from, but not limited to, the forgoing telephone number  
7 for the purpose of collecting the alleged debt.

8 10. From approximately 2014, and including within one year prior to the  
9 filing of this action, Defendant regularly and repeatedly called Plaintiff at  
10 Plaintiff's cellular telephone number ending in 9202.

11 11. From approximately 2014, and including within one year prior to the  
12 filing of this action, Defendant caused Plaintiff's telephone to ring repeatedly and  
13 continuously to annoy Plaintiff seeking to collect the alleged debt.

14 12. From approximately 2014, and including within one year prior to the  
15 filing of this action, Defendant communicated with Plaintiff with such frequency  
16 as to be unreasonable under the circumstances and to constitute harassment.

17 13. The natural and probable consequences of Defendant's conduct was  
18 to harass, oppress or abuse Plaintiff in connection with the collection of the alleged  
19 debt.

20 14. At all times relevant to this action, while conducting business in  
21 California, Defendant has been subject to, and required to abide by, the laws of the  
22 United States, which included the TCPA and its related regulations that are set forth  
23 at 47 C.F.R. § 64.1200 ("TCPA Regulations"), as well as the opinions, regulations  
24 and orders issued by the courts and the FCC implementing, interpreting and  
25 enforcing the TCPA and the TCPA regulations.

26 15. At all times relevant to this action, Defendant owned, operated and or  
27 controlled an "automatic telephone dialing system" as defined by TCPA 47 U.S.C.  
28 § 227(a)(1) that originated, routed and/or terminated telecommunications.

1           16. Within four years prior to the filing of this action, Defendant called  
 2 Plaintiff at Plaintiff's cellular telephone number hundreds of times using equipment  
 3 which has the capacity to store or produce telephone numbers to be called, using  
 4 random or sequential number generator and to dial such numbers, also known as  
 5 an "automatic telephone dialing system" as defined by TCPA 47 U.S.C. §  
 6 227(a)(1)(A) and (B).

7           17. Defendant never received Plaintiff's consent to call Plaintiff on  
 8 Plaintiff's cellular telephone using an "automatic telephone dialing system" or an  
 9 "artificial or prerecorded voice" as defined in 47 U.S.C. § 227 (a)(1).

10           18. Even assuming arguendo that Defendant did have consent to call  
 11 Plaintiff on Plaintiff's cellular telephone using an ATDS, that consent was  
 12 subsequently revoked by Plaintiff. On countless occasions, Plaintiff revoked  
 13 consent on by answering Defendant's calls, advising that he did not owe the alleged  
 14 debt, advising that the calls were harassing, and demanded that Defendant's calls  
 15 cease. Defendant would often respond by advising that the calls would not cease,  
 16 could not cease as they were automated/pre-programed, and/ or that Defendant was  
 17 not harassing Plaintiff and the calls would continue until payment was made.

18           19. At no time have Plaintiff and Defendant had an "established business  
 19 relationship" as defined by 47 U.S.C. § 227(a)(2).

20           20. Defendant is not a tax exempt nonprofit organization

21           21. Defendant's violation of the TCPA was willful. Defendant's violation  
 22 of the TCPA was willful because Plaintiff requested that Defendant cease calling  
 23 Plaintiff on countless occasions.

### 24                           **FIRST CAUSE OF ACTION**

#### 25                           **(Violation of the RFDCPA, CAL. CIV. CODE § 1788)**

26           22. Plaintiff incorporates by reference all of the above paragraphs of this  
 27 Complaint as though fully stated herein.

1        23. Defendant violated the RFDCPA. Defendant's violations include, but  
2 are not limited to, the following:

3            A. Defendant violated CAL. CIV. CODE § 1788.11(d) by causing a  
4 telephone to ring repeatedly or continuously to annoy the  
5 person called; and

6            B. Defendant violated CAL. CIV. CODE § 1788.11(e) by  
7 communicating, by telephone or in person, with the debtor with  
8 such frequency as to be unreasonable and to constitute an  
9 harassment to the debtor under the circumstances; and

10          C. Defendant violated CAL. CIV. CODE § 1788.17 by collecting or  
11 attempting to collect a consumer debt without complying with  
12 the provisions of Sections 1692b to 1692j, inclusive, of . . . Title  
13 15 of the United States Code (Fair Debt Collection Practices  
14 Act).

15          D. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15  
16 U.S.C. § 1692d by engaging in conduct, the natural  
17 consequence of which is to harass, oppress or abuse any person  
18 in connection with the collection of the alleged debt; and

19          E. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15  
20 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or  
21 engaging Plaintiff in telephone conversations repeatedly; and

22        24. Defendant's acts, as described above, were done intentionally with the  
23 purpose of coercing Plaintiff to pay the alleged debt.

24        25. As a result of the foregoing violations of the RFDCPA, Defendant is  
25 liable to Plaintiff for actual damages, statutory damages, and attorney's fees and  
26 costs.  
27  
28

**SECOND CAUSE OF ACTION**

**(Violations of the TCPA, 47 U.S.C. § 227)**

26. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

27. Defendant violated the TCPA. Defendant's violations include, but are not limited to the following:

(a) Within four years prior to the filing of this action, on multiple occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in pertinent part, "It shall be unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice — to any telephone number assigned to a . . . cellular telephone service . . . or any service for which the called party is charged for the call.

(b) Within four years prior to the filing of this action, on multiple occasions, Defendant willfully and/or knowingly contacted Plaintiff at Plaintiff's cellular telephone using an artificial prerecorded voice or an automatic telephone dialing system and as such, Defendant knowing and/or willfully violated the TCPA.

28. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is entitled to an award of five hundred dollars (\$500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that Defendant knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an award of one thousand five hundred dollars (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

29. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant for the following:

- (a) An injunction prohibiting Defendant from contacting Plaintiff on Plaintiff's cellular telephone using an automated dialing system pursuant to 47 U.S.C. § 227(b)(3)(A); and
- (b) Actual damages pursuant to CAL. CIV. CODE § 1788.30(a); and
- (c) As a result of Defendant's violations of 47 U.S.C. § 227(b)(1), Plaintiff is entitled to and requests five hundred dollars (\$500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B); and
- (d) As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff is entitled to and requests treble damages, as provided by statute, up to one thousand five hundred dollars (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C); and
- (e) Statutory damages pursuant to CAL. CIV. CODE § 1788.30(b); and
- (f) Costs and reasonable attorney's fees pursuant to CAL. CIV. CODE § 1788.30(c); and
- (g) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law; and
- (h) For such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Please take notice that Plaintiff demands a trial by jury in this action.

Dated: April 8, 2015

RESPECTFULLY SUBMITTED,  
**MARTIN & BONTRAGER, APC**

By: /s/ Nicholas J. Bontrager

G. Thomas Martin, III  
*Attorney for Plaintiff*